

1982 WL 189398 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 10, 1982

***1 Re: Confidentiality Provision—Water Use Reporting and Coordination Act**

Paul S. League, Esquire
Legal Counsel
S. C. Water Resources Commission
P. O. Box 50506
1001 Harden Street, Suite 250
Columbia, SC 29250

Dear Mr. League:

Your letter regarding the recent amendment of the Water Use Reporting and Coordination Act requiring the Commission hold confidential certain information pursuant to a claim that disclosure of such information would reveal a trade secret, process or other confidential information or would impair national security has been referred to me for review. Section 49-4-80 of the new enactment specifically states that:

Upon a claim by the user that the disclosure of particular water use information, other than the total amount used, diverted, withdrawn or obtained would reveal a trade secret, process or other confidential information or would impair national security, the commission shall hold such water use information confidential. Compilations of water use information not identifiable to the use may be published by the commission. In any case in which the total amount of water used, diverted, withdrawn or obtained is claimed to be confidential, the commission may require the user to establish that disclosure of such information would reveal a trade secret, process or other confidential information or impair national security.

Your question concerns the enforceability of the is confidentiality provision as considered in light of the South Carolina Freedom of Information Act. The cited Act, as written, is not in conflict with the provisions of the South Carolina Freedom of Information Act, since under Section 30-4-40 of the Freedom of Information Act, trade secrets are specifically exempted from disclosure. Additionally, under Section 30-4-20(c) the term 'public record' is specifically stated so as to exclude records which by law are required to be closed to the public. While the Water Use confidentiality provision is somewhat broader than the South Carolina Freedom of Information Act in that it contains an exemption for confidential information and information which would impair national security, I see no impediment in this language to enforcement.

As to the most appropriate manner by which to implement the provision in question, there are two (2) avenues of approach. The first would entail a methodology by which the Commission, upon receipt of a request for information, would immediately contact the supplier of that information informing the supplier of the request and notifying the supplier that the information would be turned over within fifteen (15) days of the date of the request, absent a statement from the originator of the information that disclosure would involve revealing a trade secret, process or other confidential information or would impair national security. In that way, the supplier of the information would be forced to review and label the information which he had supplied and to accompany the Commission into court should the information seeker implement the injunction provisions of the South Carolina Freedom of Information Act. The second avenue of approach would be that followed by the South Carolina Consolidated Procurement Code Regulations which state that unless information is labeled confidential when it is supplied, it will be subject to release on a claim made under the Freedom of Information Act. Of course, there is the additional method for withholding information under Section 30-4-20(c) by which the Commission by favorable public vote of three quarters ($\frac{3}{4}$)

of its membership taken within fifteen (15) working days after the receipt of a written request may conclude that the public interest is best served by not disclosing the information sought.

*2 If I may be of additional assistance to you, please do not hesitate to contact me.

Sincerely,

Judith Evans Finuf
Assistant Attorney General

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